

**DEPARTMENT OF AGRICULTURE**

**(New Emergency Administrative Regulation)**

**302 KAR 70:020E. Temporary Suspension for Retail Fuel Dispensers**

RELATES TO: KRS 363.900-363.908

STATUTORY AUTHORITY: KRS 363.902, 363.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department of agriculture to implement and administer an inspection and testing program for motor fuels. KRS 363.590(3) requires that the National Bureau of Standards Handbook 44 is used to establish specifications for commercial weighing and measuring devices, except insofar as specifically modified by administrative regulation. The net effect is to prohibit pricing other than that which displays and computes the total purchase price on retail fuel dispensers. This emergency regulation temporarily suspends this restriction, solely to alleviate the increasing motor fuel shortage and allow older retail fuel dispensers, which cannot compute a total unit price above 2.999, to provide motor fuel in gallon or half-gallon increments, while modification kits are installed to correct the display problem. However, this emergency administration regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular fuel dispenser.

**Section 1. Application.**

1           (1) Retail fuel dispensers, which cannot compute a total unit price above 2.999, shall be  
2 allowed to price motor fuel in gallon or half-gallon increments, at a price other than that  
3 displayed and computed on the actual fuel dispenser, except:

4                   (a) All other requirements under law shall remain in effect;

5                   (b) Pursuant to KRS 363.760, the retail facility shall prominently display the  
6 actual unit of measurement and actual price per unit at which each grade of gasoline or  
7 diesel fuel is being dispensed, in plain, clear, conspicuous and legible view of the  
8 consumer on all signage displaying the price and the pump itself and shall conceal any  
9 other price than the actual price per unit; and

10                  (c) The retail facility shall install modification kits to correct the display problem  
11 no later than October 15, 2005.

12           (2) This emergency regulation shall remain in effect until October 15, 2005.

Approved:

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Richie Farmer, Commissioner  
Department of Agriculture

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Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed amendment to the administrative regulation shall be held on October 21, 2005, at 10:00 a.m. at the Department of Agriculture, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by October 14, 2005, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Mark Farrow, 32 Fountain Place, Frankfort, Kentucky 40601 (502-564-5126)

## **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

**Administrative Regulation #:** 302 KAR 70:020E

**Contact person:** Mark Farrow, 32 Fountain Place, Frankfort, Kentucky 40601 (502-564-5126)

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:** This emergency regulation temporarily allows older retail fuel dispensers, which cannot compute a total unit price above 2.999, to provide motor fuel in gallon or half-gallon increments, while modification kits are installed to correct the display problem. However, this emergency administration regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular fuel dispenser.

**(b) The necessity of this administrative regulation:** The current motor fuel shortage has resulted in an unprecedented price increase. Requiring older retail fuel dispensers, which have existing fuel supplies, to shut down while modification kits are installed artificially reduces supply and increases the motor fuel shortage. This administrative regulation should allow consumers some relief by increasing, as opposed to restricting, motor fuel supply.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 363.590 adopts the National Bureau of Standards Handbook, which prohibits pricing other than that which displayed on a retail fuel dispenser. However, the statute also allows for modification and amendment to these requirements by administrative regulation.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** See (1)(b).

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:** N/A

**(b) The necessity of the amendment to this administrative regulation:** N/A

**(c) How the amendment conforms to the content of the authorizing statutes:** N/A

**(d) How the amendment will assist in the effective administration of the statutes:** N/A

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** Local retail facilities with older fuel dispensers (approximately 10% of current motor fuel retailers in Kentucky) and end consumers.

**(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:** See (1)(b).

**(5) Provide an estimate of how much it will cost to implement this administrative regulation:**

**(a) Initially:** Administrative costs of this emergency regulation should be minimal. Retail facilities have to install modification kits under current law anyway.

**(b) On a continuing basis:** This emergency regulation will only be in force temporarily, until October 15, 2005.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** Existing government resources.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

No increase in fees or funding will be necessary. The additional costs will come from existing agency funds.

**(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:** No

**(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)** No. This regulation applies equally to all regulated entities.